



U.S. Department of  
Transportation  
Office of the Secretary  
of Transportation

## NOTICE OF ACTION TAKEN

### DOCKET OST-98-3726

This serves as interim notice to the public of the action described below, taken orally by the Department official indicated; the confirming order or other decision document will be issued as soon as possible.

Applicant: **ETHIOPIAN AIRLINES ENTERPRISE**

Date Filed: April 9, 1998

Relief requested: Exemption from 49 U.S.C. 41301 to conduct scheduled foreign air transportation of persons, property and mail between Addis Ababa, Ethiopia, and Washington, D.C. (Ethiopian Airlines proposes to commence twice weekly scheduled combination service between Addis Ababa and Washington, via a non-traffic stop in Rome, on June 4, 1998.)

Applicant representative: Thomas Whalen 202-298-0500

Responsive pleadings: The Washington Parties submitted an answer in support. Delta Air Lines, Inc., filed an answer stating that it does not object to grant of the requested authority on the basis of comity and reciprocity, provided that the Government of Ethiopia is willing to grant U.S. carrier requests to serve Ethiopia on a third-country code-share basis. Ethiopian Airlines filed a reply stating that Delta does not currently seek to provide either direct or code-share service to Ethiopia; that Delta's hypothetical objection is no basis for delaying or conditioning grant of the requested authority; that the Ethiopian Government has granted United Air Lines authority to conduct its proposed code-share operations to Ethiopia; and that a blanket grant of third-country code-sharing rights by the Ethiopian Government to U.S. carriers is not a reciprocal right to the direct U.S.-Ethiopia service for which it is seeking authority here.

### DISPOSITION

Action: APPROVED

Action date: May 22, 1998

Effective dates of authority granted: May 22, 1998 - May 22, 1999

Remarks: We found that grant of this authority was consistent with the public interest and that reciprocity with Ethiopia was adequate to support grant of the requested authority. With respect to Delta's comments, we were unable to conclude on this record that they provided a persuasive basis to withhold the requested authority, taking into account the facts that the Ethiopian Government already has approved the third-country carrier code-share operations of United Air Lines, Inc., and that Delta does not now have a concrete proposal to serve Ethiopia. We also found, based on the record, that the applicant is operationally and financially qualified to conduct the proposed services, properly licensed by its homeland, and wholly owned and controlled by the Government of Ethiopia. Finally, the FAA has advised us that it knows of no reason to withhold this authority.

Except to the extent exempted/waived, this authority is subject to the terms, conditions, and limitations indicated:

X Standard exemption conditions (attached)

Action taken under assigned authority (14 CFR 385) by: Paul L. Gretch, Director

Office of International Aviation

(Petitions for review may be filed from now until 10 days after the service date of the confirming order/letter. Filing of a petition shall not stay the effectiveness of this action.)

## ATTACHMENT

**CONDITIONS OF AUTHORITY**

In the conduct of the operations authorized, the holder shall:

- (1) Not conduct any operations unless it holds a currently effective authorization from its homeland for such operations, and it has filed a copy of such authorization with the Department;
- (2) Comply with all applicable requirements of the Federal Aviation Administration, including, but not limited to, 14 CFR Parts 129, 91, and 36;
- (3) Comply with the requirements for minimum insurance coverage contained in 14 CFR Part 205, and, prior to the commencement of any operations under this authority, file evidence of such coverage, in the form of a completed OST Form 6411, with the Federal Aviation Administration's Program Management Branch (AFS-260), Flight Standards Service (any changes to, or termination of, insurance also shall be filed with that office);
- (4) Not operate aircraft under this authority unless it complies with operational safety requirements at least equivalent to Annex 6 of the Chicago Convention;
- (5) Conform to the airworthiness and airman competency requirements of its Government for international air services;
- (6) Comply with the requirements of 14 CFR Part 203, concerning waiver of Warsaw Convention liability limits and defenses;
- (7) Agree that operations under this authority constitute a waiver of sovereign immunity, for the purposes of 28 U.S.C. 1605(a), but only with respect to those actions or proceedings instituted against it in any court or other tribunal in the United States that are:
  - (a) based on its operations in international air transportation that, according to the contract of carriage, include a point in the United States as a point of origin, point of destination, or agreed stopping place, or for which the contract of carriage was purchased in the United States; or
  - (b) based on a claim under any international agreement or treaty cognizable in any court or other tribunal of the United States.

In this condition, the term "international air transportation" means "international transportation" as defined by the Warsaw Convention, except that all States shall be considered to be High Contracting Parties for the purpose of this definition;

- (8) Except as specifically authorized by the Department, originate or terminate all flights to/from the United States in its homeland;
- (9) Comply with the requirements of 14 CFR Part 217, concerning the reporting of scheduled, nonscheduled, and charter data;
- (10) If charter operations are authorized, comply with the Department's rules governing charters (including 14 CFR Parts 212 and 380); and
- (11) Comply with such other reasonable terms, conditions, and limitations required by the public interest as may be prescribed by the Department, with all applicable orders or regulations of other U.S. agencies and courts, and with all applicable laws of the United States.

This authority shall not be effective during any period when the holder is not in compliance with the conditions imposed above. Moreover, this authority cannot be sold or otherwise transferred without explicit Department approval under Title 49 of the U.S. Code (formerly the Federal Aviation Act of 1958, as amended).

(41301/40109) 12/96